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No. 92-1984

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

PENNSYLVANIA FEDERATION OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES and VINCENT BENNETT, individually and on behalf of all others similarly situated,

Petitioners,

v.

NATIONAL RAILROAD PASSENGER CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF IN OPPOSITION OF RESPONDENT NATIONAL RAILROAD PASSENGER CORPORATION

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QUESTION PRESENTED

Is a lawsuit alleging a violation of Pennsylvania's Minimum Wage Act of 1968, 43 Pa. Cons. Stat. Ann. § 333.104(c), preempted under the standard established in *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988), when resolution of the state law claim depends upon the interpretation of a Railway Labor Act collective bargaining agreement?

LIST OF PARTIES

The parties to the proceedings below and to this Petition are Petitioners Pennsylvania Federation of the Brotherhood of Maintenance of Way Employes, a railroad union, and Vincent Bennett, an employee of the National Railroad Passenger Corporation and a member of the union. The Respondent is the National Railroad Passenger Corporation, a for-profit corporation created by Congress to operate rail passenger service nationally.

Respondent has no parent companies, subsidiaries or affiliates to list pursuant to Rule 29.1.

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BRIEF IN OPPOSITION OF RESPONDENT NATIONAL RAILROAD PASSENGER CORPORATION

Respondent National Railroad Passenger Corporation ("Amtrak") respectfully requests that this Court deny the petition for writ of certiorari submitted by Petitioners seeking review of the decision by the United States Court of Appeals for the Third Circuit in this case.

COUNTERSTATEMENT OF THE CASE

Petitioner Pennsylvania Federation of the Brotherhood of Maintenance of Way Employes ("BMWE") is a union representing Amtrak employees who construct and main-

tain Amtrak's tracks, bridges and facilities. Petitioner Vincent Bennett is an Amtrak track worker represented by the BMWE. The gravamen of Petitioners' Complaint is that the provision of the collective bargaining agreement between Amtrak and the BMWE governing payment for "travel time" violates the Minimum Wage Act of 1968 (hereinafter "Minimum Wage Act"), 43 Pa. Cons. Stat. Ann. § 333.104(c).[1] Specifically, Petitioners claim that Amtrak has violated the state Minimum Wage Act by not paying employees overtime for time spent traveling from their job site to their headquarters or camp car locations after their regular tours of duty.

The Court of Appeals, affirming a decision by the District Court for the Eastern District of Pennsylvania (Pet. App.[2] at 10a-17a), found that the statutory and regulatory terms upon which Petitioners' claim was based could only be applied in the circumstances of this case by interpreting the collective bargaining agreement between Amtrak and the BMWE. Applying the rule announced in *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399

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[1] Pennsylvania's Minimum Wage Act requires an employer to compensate employees for overtime at a rate not less than one and one-half times the employee's regular rate. Overtime is defined as "hours in excess of forty hours in a workweek."

The pertinent regulation promulgated pursuant to the Minimum Wage Act defines "hours worked" as follows:

> all time during which an employee is required by the employer to be on the premises of the employer, to be on duty, or to be at the prescribed work place, *all time spent traveling as part of the duties of the employe[e] during normal working hours*, and all time during which an employe[e] is employed or permitted to work: provided, however . . . that time spent on the premises of the employer for the convenience of the employe[e] shall be excluded.

34 Pa. Code § 231.1 (emphasis added).

[2] "Pet. App." refers to the Appendix appended to the Petition for a Writ of Certiorari.

(1988), the Court concluded that since the resolution of Petitioners' claim required the interpretation of a labor agreement, that claim was preempted by the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 *et seq.* Pet. App. at 1a-9a. That decision is reported at 989 F.2d 112 (3d Cir. 1993).

Factual Background: The Collective Bargaining Agreement Provisions.

Amtrak and the BMWE are parties to a collective bargaining agreement negotiated in accordance with the RLA. The BMWE-represented employees whose pay is at issue here are based in camp cars [3] or permanent headquarters and travel to and from different job sites to maintain the track and right-of-way.

The collective bargaining agreement contains numerous, detailed provisions for determining the employees' rates of pay. As a general rule, the agreement establishes a five-day, 40-hour work week and requires that employees be paid overtime for any time worked beyond their scheduled daily hours. Employees are paid overtime at either one and one-half or two times their hourly rate of pay depending on the circumstances.

The parties have also established a detailed system of pay for travel time. Under the agreement, all travel time within the employees' assigned tour of duty (scheduled working hours) is counted as hours worked for the purpose of computing eligibility for overtime pay. In addition, the agreement requires that employees be paid one and one-half times their regular rate when they are called to work outside their regular tour of duty, regardless of whether the time is spent working or traveling.

Under the agreement, time spent by an employee traveling back to the base location *after* completion of a reg-

[3] "Camp cars" provide portable housing for certain employees while working on the track and right-of-way.

ular tour of duty is not included within the forty hour work week and therefore, is not considered "hours worked" for purposes of computing eligibility for overtime. While Amtrak transports the employees to their base locations, they perform no service and receive a payment equivalent to straight time.[4]

Although the agreement also provides a grievance procedure for the express purpose of resolving disputes over compensation, Petitioners did not submit their claims to the grievance process.

Court Proceedings Below.

Petitioners originally filed suit in the Philadelphia County Court of Common Pleas; therafter, Amtrak removed the case to the United States District Court for the Eastern District of Pennsylvania based on 28 U.S.C. § 1349. Subsequently, the parties stipulated to the facts, and each filed dispositive motions.

By Order dated June 15, 1992, District Court Judge William Yohn, Jr. dismissed Petitioners' Complaint. The District Court noted that travel time, under the relevant state regulation, will be considered as "hours worked" for the purpose of overtime compensation only when traveling is "part of the duties of the employe[e] during normal working hours." Pet. App. at 15a. The Court reasoned that the determination of "whether travel time at issue in this case qualifies as part of the duties of the employee or whether such travel is undertaken during the established working hours can[not] be determined without reference to the terms of the collective bargaining agreement, and therefore was preempted." Pet. App. at 15a-16a.

The Court of Appeals, by an Order dated March 18, 1993, affirmed the dismissal of Petitioners' lawsuit. The Court of Appeals noted that the RLA requires that all

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[4] Amtrak believes that such payments are in excess of the requirements of Pennsylvania's Minimum Wage Act.

"minor disputes"—disputes arising out of the interpretation of labor agreements—must be submitted to arbitration. Pet. App. at 5a. The Court recognized that this Congressional deference to arbitration was not intended to wholly preempt states from exercising their police powers to regulate minimum working conditions. *Id.* Nonetheless, under the more limited preemption doctrine established in *Lingle,* the Court held the particular state-law claim at issue was preempted because its resolution depended upon an interpretation of the bargaining agreement. In particular, the Court concluded that it would be impossible to determine if travel time after a tour of duty was "part of the duties of the employe[e]", without interpreting the labor agreement. *Id.* Similarly, the Court also held that a determination of whether this type of employee travel time satisfied some other regulatory criterion for "hours worked" also required an interpretation of the labor agreement. Pet. App. at 7a.[5]

REASONS WHY THE PETITION SHOULD BE DENIED

Petitioners disagree with the manner in which the District Court and Court of Appeals applied the well-settled law under *Lingle* to the particular facts of this case. *Lingle* made it clear that "judges can determine questions of state law involving labor-management relations only if such questions do not require construing collective-bargaining agreements". *Lingle,* 486 U.S. at 411. Petitioners have litigated the issue of whether the Court of Appeals misapplied the *Lingle* standard in this case and they have lost. This type of disagreement does not warrant Supreme Court review. As we show below, Petitioners' attempt to manufacture issues for Court review by claiming that a conflict exists among the Circuits and that

[5] Before the Court of Appeals, Petitioners relied for the first time on that part of the regulation that defines "hours worked" as time on that part of the regulation that defines "hours worked" as premises of the employer, to be on duty or to be at the prescribed work place."

the Court of Appeals' decision below fails to follow Supreme Court precedent is unavailing.

I. THERE IS NO CONFLICT IN THE CIRCUITS ON ANY MATERIAL ISSUE RAISED BY PETITIONERS.

In an effort to create a conflict of law, Petitioners suggest that the Court of Appeals relied on reasoning that in fact played no role in the Court's decision. Contrary to Petitioners' claim, this case does not present the question of whether the scope of preemption under the RLA is broader than that under the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. Here, the Court of Appeals specifically held that Petitioners' state claim was preempted under the LMRA standard of preemption articulated in *Lingle*. Its holding was not based on any finding regarding the parameters of RLA preemption. Indeed, it expressly noted that it need not reach the question whether there is a distinction between RLA and LMRA preemption because Petitioners' claim met the arguably narrower standard for preemption under the LMRA.

> We realize that *Lingle* involved a claim of preemption under the Labor Management Relations Act, and not the Railway Labor Act; however, this difference is not significant in our case because if anything preemption is broader under the Railway Labor Act.

Pet. App. at 6a n.7 (989 F.2d at 115 n.7) (citations omitted). Accordingly, this case does not provide this Court with the occasion to resolve any conflict that may exist among other Courts of Appeals regarding whether the preemptive effect of the RLA is even greater than that of the LMRA.[6]

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[6] Amtrak had argued in the alternative to the lower courts that the RLA has a broader preemptive effect than the LMRA. However,

More importantly, however, there is *no* conflict among the Circuits regarding the issue that the Court of Appeals did address, namely, the applicability of *Lingle* preemption in factual circumstances like this case. Petitioners have cited no other Court of Appeals decisions—and Amtrak is aware of none—that conflict with the Court of Appeals decision below. Indeed, two courts that have considered a BMWE state-law wage claim, similar to the one at issue here, reached the same conclusion as the Court of Appeals in this case. In *Brotherhood of Maintenance of Way Employes v. Conrail,* No. L-01902-89 (N.J. Superior Ct. Law Div., January 25, 1991), *aff'd,* No. A-3255-90TS (N.J. Superior Ct. App. Div., January 28, 1992), the BMWE attempted, as it does here, to undercut the terms of a labor agreement that it negotiated. In that case, the union claimed that Conrail owed employees additional overtime compensation under New Jersey law.[7] Like the Court of Appeals here, the New Jersey courts determined that such a claim was a "minor dispute" because the resolution of the state law claim depended upon an interpretation of the labor agreement and that the courts therefore lacked jurisdiction to entertain the claim.

II. THE COURT OF APPEALS' DECISION IS NOT INCONSISTENT WITH ANY DECISIONS OF THE COURT AND DOES NOT RAISE ANY IMPORTANT ISSUES REQUIRING THE COURT'S ATTENTION.

Petitioners also claim that the Court should "exercise . . . [its] power of supervision" because the Court of Appeals' decision at issue here fails to follow Supreme

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as noted above, the Court of Appeals did not need to resolve that issue since the claim here was preempted under *Lingle.*

[7] Specifically, the BMWE claimed that Conrail's practice under the terms of the BMWE/Conrail labor agreement of paying camp car cooks only straight time for their "down time", including the time spent by the cooks commuting from the work site to the camp cars, was unlawful under the New Jersey minimum wage law.

Court precedent. (Petition at 18). Petitioners' argument is based on a misreading of the Court of Appeals' opinion and is wholly without merit.

The cases upon which Petitioners principally rely—*Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987), *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985), *DeCanas v. Bica*, 424 U.S. 351 (1976) and *Terminal R.R. Ass'n v. Railroad Trainmen*, 318 U.S. 1 (1942)—are all inapposite to the instant case. These decisions deal with the issue of whether specific federal regulations so "occup[y] the field" that state legislation setting minimum labor standards is wholly preempted and unenforceable. *See e.g. Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. at 747-48. By contrast, this case presents the completely different and far narrower question of whether a particular claim based on a state regulation is preempted under *Lingle* when that claim cannot be resolved without interpreting and applying the terms of a particular collective bargaining agreement. *Lingle* preemption does not render the Pennsylvania minimum wage law unenforceable or preclude the state from setting minimum wage standards. Rather, it insulates the collective bargaining agreement from judicial interpretation and preempts only that narrow class of state-law claims that cannot be resolved without such an interpretation. By doing so, *Lingle* preemption ensures that the task of interpreting an RLA agreement is performed by the statutorily mandated arbitration forums that have specialized expertise in that area. *See Consolidated Rail Corp. v. Railway Labor Executives' Ass'n*, 491 U.S. 299, 310 (1989).

Moreover, application of the *Lingle* preemption standard in the circumstances of this case is unexceptional. Although Petitioners argue that no interpretation of a labor agreement is necessary, the courts below properly

gave that argument short shrift.[8] As the Court of Appeals correctly observed, it is impossible to determine whether the time BMWE-represented employees spend traveling is "part of the duties of the employe[e]" without interpreting the collective bargaining agreement to see exactly what their duties are. Moreover, the application of other regulatory indicia to determine if time spent was "hours worked" was similarly dependent upon an interpretation of the labor agreement. As the Court of Appeals noted:

> [I]n order to determine whether the workers are '*required by the employer* to be on the premises of the employer, to be on duty, or to be at the prescribed work place' during the time spent traveling, we would have to interpret the collective bargaining agreement. For example, a worker living near a job site might be able to go directly home instead of going on an AMTRAK vehicle back to headquarters. Similarly, if a job site were near the place of employment of a worker's spouse, the spouse might be able to pick up the worker on the way home. . . In other words, only an interpretation of the collective bargaining agreement can tell us if these AMTRAK employees are *required* to travel on the AMTRAK vehicles after their work shifts are done.

Pet. App. at 7a (989 F.2d at 115) (emphasis in original).

Indeed, *Lingle* preemption is especially appropriate in a case such as this where the applicable state statutory provision and regulation define an employer's obligations

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[8] Petitioners suggest that a court need only look at whether employees were paid straight time when they were paid for more than forty hours, and then give them half-time pay for those additional hours. However, merely because Amtrak agreed to *pay* employees for what is, in essence, commuting, does not mean such travel time was "part of the duties of the employe[e] during working hours". As part of the give and take of bargaining, employers frequently agree to compensate employees for time that they are not actually performing job duties.

by reference to classic collective bargaining terminology that has no independent statutory meaning. The regulatory terms that underlie the state claims—for example, duties of employees and normal working hours—necessarily depend upon the interpretation of the bargaining agreement. The statute and regulation would have been structured differently had they been intended to operate independently from the labor agreement.[9]

In sum, this case presents a run-of-the-mill situation where the resolution of a state claim is inextricably involved with an interpretation of a labor agreement and is accordingly preempted. Petitioners' real complaint is with the Court's application of the *Lingle* preemption standard to the facts of this case. However, that is not an issue that warrants review by the Court.[10]

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[9] This is not a case where the labor agreement, on its face, violates a state minimum wage act. In such a situation, *Lingle* preemption is arguably not operative. By contrast, this case is one where undefined regulatory terms can only be resolved by interpreting a bargaining agreement.

[10] Regardless of whether or not *Lingle* preemption is operative here, the parties' agreed-upon practice of compensating for travel time is in accord with the state statute. Under the agreement, time spent travelling during normal working hours, i.e. tour of duty, is treated as hours worked and counts toward overtime. If, however, travel occurs *after* regular work hours, it is compensated at the regular rate, but is not counted as hours worked for the purposes of calculating overtime. Amtrak's practice is wholly consistent with regulations and court decisions under federal law that are similar to the Pennsylvania statute upon which Petitioners rely. *See* Portal to Portal Act, 29 U.S.C. § 254; *Dolan v. Project Constr. Corp.*, 558 F. Supp. 1308 (D.Colo. 1983) (time spent commuting by company bus from reporting location to work site is not compensable as overtime under the Fair Labor Standards Act, 29 U.S.C. §§ 151 *et seq.*). Indeed, by compensating employees for time spent commuting between the work site and headquarters outside their normal tour of duty, Amtrak is far more generous than state law requires.

CONCLUSION

For the foregoing reasons, Amtrak respectfully requests that the Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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